U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32717370

Date: AUG. 8, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner is a musician and vocal artist who seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Nebraska Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding that although the record established that the Petitioner met at least three of the ten regulatory criteria, she did not merit a favorable determination in a final merits analysis. The matter is now before us on appeal. The Petitioner bears the burden of proof to demonstrate eligibility to U.S. Citizenship and Immigration Services (USCIS) by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

I. LAW

To qualify under this immigrant classification, the statute requires the filing party demonstrate:

- The foreign national enjoys extraordinary ability in the sciences, arts, education, business, or athletics;
- They seek to enter the country to continue working in the area of extraordinary ability; and
- The foreign national's entry into the United States will substantially benefit the country in the future.

Section 203(b)(1)(A)(i)–(iii) of the Act. The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2).

The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-step analysis. In the first step, a petitioner can demonstrate international recognition of his or her achievements in the field

through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then move to the second step to consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115, 1121 (9th Cir. 2010) (discussing a two-step review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022).

II. ANALYSIS

The Petitioner has studied the arts and in 2023 earned her foreign bachelor's degree in the field of art and singing. Before the Director, the Petitioner claimed she met five regulatory criteria. The Director decided that the Petitioner satisfied three criteria relating to published material, authorship of scholarly articles, and display of her work but that she had not satisfied the criteria associated with prizes or awards, or original contributions. The Director further decided that when considering all her evidence and claims, she did not demonstrate she enjoyed sustained acclaim or that her achievements reflect she is one of that small percentage who has risen to the top of her field. On appeal, the Petitioner maintains that she meets the evidentiary criteria relating to prizes or awards and original contributions, but she does not contest the Director's final merits determination.

After reviewing the entire record, we adopt and affirm the Director's ultimate determination with the added comments below. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Antonio v. Garland*, 58 F.4th 1067, 1072 (9th Cir. 2023) (joining every other U.S. Circuit Court of Appeals in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

As it relates to the Petitioner's lesser awards, when discussing two of the submitted awards the Director noted the supporting evidence (news articles) did not establish those accolades received national or international recognition as the regulation requires. *See* 8 C.F.R. § 204.5(h)(3)(i). The Director indicated the Petitioner did not show that evidence was a form of major media, which might convey the requisite level of recognition in the field. The Director also noted some evidentiary deficiencies with the supporting material (the author's name was absent) and decided that decreased the value of those items.

On appeal, the Petitioner argues no requirement exists in USCIS' regulations or case law stating that she must submit press articles about her awards and that each press article must identify an author of the article. We agree with the Petitioner's statement that under the prizes or awards criterion, these elements are not compulsory. But the Director didn't mandate press articles, nor did they reject them because they lacked an author. After the Petitioner submitted articles as her supporting evidence, the

Director merely indicated that press coverage was one method to illustrate a prize or award is nationally or internationally recognized, and they are permitted to evaluate the quality of the evidence to decide the evidentiary weight each type of material should garner. Ultimately, to determine whether a party has established eligibility for a requested benefit by a preponderance of the evidence, the Director must examine each piece of evidence for relevance, probative value, and credibility. *Chawathe*, 25 I&N Dec. at 376. It appears this is what the Director did here.

Additionally, within the appeal the Petitioner refers to an exhibit containing several pieces of evidence in their original filing without explaining what that evidence consists of, how it demonstrates she might satisfy this criterion's requirements, or how the Director might have erred in their decision. In visa petition proceedings, it is a petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act; 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Commensurate with that burden is the responsibility for explaining the significance of proffered evidence. *Repaka v. Beers*, 993 F. Supp. 2d 1214, 1219 (S.D. Cal. 2014). Filing parties should not generally refer to a grouping of evidence without notifying the appellate body of the specific documentation that corroborates their claims within that material, as doing so places an undue burden on the appellate body to search through the documentation without the aid of the filing party's knowledge. *Nolasco-Amaya v. Garland*, 14 F.4th 1007, 1012–13 (9th Cir. 2021) (citing *Toquero v. INS*, 956 F.2d 193, 196 n.4 (9th Cir. 1992)); *Nazakat v. INS*, 981 F.2d 1146, 1148 (10th Cir. 1992).

Regarding the scholarships the Petitioner received, the Director did not consider the scholarships as qualifying under this criterion. The Director indicated that academic study is not a field of endeavor and is instead training for a future field of endeavor. They also determined these were limited to other students, and counted them out of the running as sufficient evidence. The USCIS Policy Manual recognizes it is possible for some scholastic awards to qualify under the awards criterion provided they are not limited to persons within a single locality, employer, or school but "an award open to members of a well-known national institution (including an R1 or R2 doctoral university[]) or professional organization may be nationally recognized." *See generally* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policymanual. The relevant factor is whether the filing party shows the award is recognized in the field at a national or an international level. *Id.*

The material the Petitioner offered to demonstrate the scholarships were at least nationally recognized were press articles about the foundation that issued the scholarship. But the Petitioner only offered the actual articles and what was lacking was material showing those news outlets were a form of major media or a prominent national-level news source. This fell short of the Petitioner's burden to demonstrate how the field views the scholarships or why the field considers the scholarships as nationally or internationally recognized prizes or awards for excellence. Here, even though we are adopting and affirming the Director's determination under the prizes or awards criterion, we have also addressed some of the Petitioner's arguments raised in the appeal, but explained why we continue to agree with the Director.

Because the Petitioner satisfied at least three regulatory criteria, the Director then evaluated whether she had demonstrated her sustained national or international acclaim, that she was one of the small percentage at the very top of the field of endeavor, and that her achievements had been recognized in the field through extensive documentation. In a final merits determination, the Director analyzes the Petitioner's accomplishments and weighs the totality of the evidence to determine if her successes are

sufficient to demonstrate that she has extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119–20). *See also* 6 *USCIS Policy Manual*, *supra*, F.2(B)(2) (stating that USCIS officers then evaluate the evidence together when considering the petition in its entirety to determine if a petitioner has established by a preponderance of the evidence the required high level of expertise of the immigrant classification).

The Director's final merits determination evaluated the Petitioner's achievements and noted specific deficiencies relating to her awards, letters of support about her work, her scholarly articles, and her performances. But on appeal, the Petitioner does not contest any of the Director's findings relating to those broad categories and instead delivers a harangue about the propriety of USCIS performing a final merits determination. The brief then focuses the Petitioner's arguments on individual criteria under 8 C.F.R. § 204.5(h)(3)(i)–(x) instead of the actual basis for the Director's denial in the final merits, then closes vaguely asserting she has met the classification's requirements.

The Petitioner's appeal brief is unresponsive to and has not adequately addressed the shortcomings the Director noted in the denial's final merits determination portion. Such uncontested issues are considered waived or forfeited on appeal and we will not address issues that are not adequately briefed. *Matter of F-C-S-*, 28 I&N Dec. 788, 789 n.3, 791 n.6 (BIA 2024) (finding issues not challenged on appeal are waived). Because the brief does not address the specific reasons for the Director's denial, she has not demonstrated her sustained national or international acclaim and that she is one of the small percentage at the very top of the field of endeavor, and that her achievements have been recognized in the field through extensive documentation.

Even if this was not the case, we have reviewed the record in the aggregate, concluding it does not support a finding that the Petitioner has established the acclaim and recognition required for this classification. The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward that goal. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994).

III. CONCLUSION

For the reasons discussed above, the Petitioner has not demonstrated her eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.